

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JUSTIN GARDNER,

Petitioner,

vs.

STATE OF NEBRASKA,

Respondent.

8:18CV46

MEMORANDUM AND ORDER

This matter is before the court on the Notice of Appeal (filing 166) and Motion for Leave to Appeal in Forma Pauperis (filing 167) filed by Petitioner Justin Gardner on April 5, 2022. Petitioner seeks to appeal from the Judgment entered by the Eighth Circuit Court of Appeals on March 14, 2022. (Filing 165.) Petitioner may only seek further review of the Eighth Circuit Court of Appeals' Judgment by either filing a petition for rehearing with the Eighth Circuit, *see* Fed. R. App. P. 40 (“[A] petition for panel rehearing may be filed within 14 days after entry of judgment.”), or filing a petition for a writ of certiorari in the United States Supreme Court, *see* 28 U.S.C. § 1254 (“Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of the judgment or decree”); Sup. Ct. R. 13.1 (petition for writ of certiorari to review a judgment entered by a United States court of appeals must be filed with the Clerk of the Supreme Court within 90 days after entry of the judgment).

Not only is Petitioner's attempt to appeal the Eighth Circuit's judgment improper, but Petitioner already has pursued an interlocutory appeal, direct appeal, and seven subsequent appeals in this matter, which has long been closed. Accordingly, I certify that this appeal is frivolous and not taken in good faith, and

Petitioner may not proceed in forma pauperis on appeal. *See* Fed. R. App. P. 24(a)(3) and 28 U.S.C. § 1915(a)(3).

IT IS THEREFORE ORDERED that Petitioner's Motion for Leave to Appeal in Forma Pauperis (filing 167) is denied. This matter is closed, and Petitioner should refrain from filing any further frivolous appeals in this court.

Dated this 12th day of April, 2022.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge